

Draft Regulations laid before Parliament under section 316(2)(n) of the Pensions Act 2004, for approval by a resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2018 No.

PENSIONS

**The Financial Assistance Scheme (Increased
Cap for Long Service) Regulations 2018**

*Made - - - - - ***
Coming into force in accordance with regulation 1*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 286, 315(2), (4) and (5) and 318(1) of the Pensions Act 2004(1).

A draft of these Regulations was laid before Parliament in accordance with section 316(2)(n) of that Act(2) and approved by a resolution of each House of Parliament.

In accordance with section 317(1) of that Act, the Secretary of State for Work and Pensions has consulted such persons as the Secretary of State considers appropriate.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Financial Assistance Scheme (Increased Cap for Long Service) Regulations 2018 and come into force on the day after the day on which they are made.

(2) In these Regulations, “the FAS Regulations” means the Financial Assistance Scheme Regulations 2005(3).

Meaning of “the FAS cap”

2. After regulation 17A (ill health payments) of the FAS Regulations(4), insert—

“Meaning of “the FAS cap”

17AA.—(1) This regulation gives the meaning of “the FAS cap” for the purposes of—

(1) [2004 c.35](#). Section 286 was amended by section 18(2) and (3) of the Pensions Act [2007 \(c.22\)](#) and by section 124 of the Pensions Act [2008 \(c.30\)](#) (“the 2008 Act”). Section 286 is modified in its application to multi-employer schemes by [S.I. 2005/441](#) (amended by [S.I.s 2005/993](#), [2005/2113](#), [2008/731](#), [2010/725](#), [2011/2973](#) and [2012/1688](#)). Section 318(1) is cited because of the meanings given to “prescribed” and “regulations”.

(2) Section 316(2)(n) was amended by section 124(9) of the 2008 Act.

(3) [S.I. 2005/1986](#).

(4) Regulation 17A was inserted by [S.I. 2008/1903](#) and was amended by [S.I.s 2009/792](#), [2009/1851](#), [2010/1149](#) and [2011/839](#).

- (a) Schedule 2 (determination of annual and initial payments); and
 - (b) Schedule 2A (determination of ill health and interim ill health payments)(5).
- (2) In this regulation, “the standard amount” means the appropriate amount given in—
- (a) paragraph 7(3) of Schedule 2 in the case of an annual or initial payment; and
 - (b) paragraph 7(3) of Schedule 2A in the case of an ill health or interim ill health payment.
- (3) The FAS cap for or in respect of a person who has 20 or fewer years of pensionable service at the time when the person first becomes entitled to an annual payment or (as the case may be) an ill health payment is the standard amount.
- (4) Subject to paragraph (6), the FAS cap for or in respect of a person who has more than 20 years of pensionable service at that time is the sum of—
- (a) the standard amount, and
 - (b) for each whole year of pensionable service that exceeds 20 years of pensionable service, the amount found by multiplying the standard amount by 3%.
- (5) If the total amount calculated under paragraph (4)(b) would exceed the standard amount, it is to be treated as being equal to the standard amount.
- (6) The FAS cap for the purposes of determining the amount of an initial payment or an interim ill health payment(6)is the standard amount.
- (7) In any case where—
- (a) the scheme manager cannot determine the length of some or all of a person’s pensionable service under the scheme rules(7); or
 - (b) the person has benefits under the rules which are not attributable to a particular period of pensionable service,
- the scheme manager must treat the person as having a length of pensionable service as the scheme manager considers appropriate (which is in addition to any other pensionable service the person has for the purposes of this regulation), having regard to the scheme rules and to such other information as the scheme manager considers relevant.
- (8) When calculating a person’s pensionable service for the purpose of determining the amount of the FAS cap in relation to a qualifying pension scheme(8), no account is to be taken of any pensionable service that the person may have under a different pension scheme.
- (9) A person who is regarded as a qualifying member under regulation 15(5) (qualifying members)(9) must be treated for the purposes of this regulation as having pensionable service of the same length as the deceased former member (which is in addition to any pensionable service that the person is treated as having under paragraph (7)).
- (10) A pension credit member(10) credited with a length of notional pensionable service because of pension credit rights must be treated for the purposes of this regulation as having pensionable service of that length (which is in addition to any pensionable service that the person is treated as having under paragraph (7)).”.

(5) Schedule 2A was inserted by [S.I. 2008/1903](#).

(6) See regulation 2(1) of the FAS Regulations for the meaning of “initial payment” and “interim ill health payment”.

(7) See regulation 2(1) of the FAS Regulations for the meaning of “scheme rules”.

(8) See regulation 2(1) and 9 of the FAS Regulations for the meaning of “qualifying pension scheme”.

(9) Regulation 15(5) was amended by S.I.s [2007/3581](#), [2008/1903](#) and [2010/1145](#).

(10) See regulation 2(1) for the meaning of “pension credit member”.

Amendment of Schedule 2 to the FAS Regulations

3. Paragraph 7 (cap on expected pension and actual pension) of Schedule 2 to the FAS Regulations(11) is amended as follows—

- (a) in sub-paragraphs (3), (4) and (6), for “the FAS cap” in each place where it appears substitute “the standard amount”;
- (b) in sub-paragraph (5), for “sub-paragraph (3)” substitute “regulation 17AA (meaning of “the FAS cap)””; and
- (c) in sub-paragraph (6), for the reference to “(3)(e)”, substitute “(3)(f)”.

Amendment of Schedule 2A to the FAS Regulations

4. Paragraph 7 (cap on expected pension and actual pension) of Schedule 2A to the FAS Regulations(12) is amended as follows—

- (a) in sub-paragraphs (3), (4) and (5), for “the FAS cap” in each place where it appears substitute “the standard amount”; and
- (b) in sub-paragraph (5), for “(3)(c)” substitute “(3)(d)”.

Transitional provision

5.—(1) Paragraph (3) applies to a person where—

- (a) the person is in receipt of an annual payment or (as the case may be) an ill health payment;
- (b) the person first became entitled to that payment before these Regulations come into force; and
- (c) payment to that person is capped in accordance with paragraph 7 of Schedule 2 or paragraph 7 of Schedule 2A to the FAS Regulations.

(2) Paragraph (3) also applies to a person where—

- (a) the person is in receipt of an initial payment or (as the case may be) an interim ill health payment on or after the day these Regulations come into force;
- (b) the person subsequently receives an annual payment or (as the case may be) an ill health payment; and
- (c) payment to that person is capped in accordance with paragraph 7 of Schedule 2 or paragraph 7 of Schedule 2A to the FAS Regulations.

(3) Where this paragraph applies, the amount of the annual payment or the ill health payment to the person is to be recalculated in accordance with regulation 17AA(4) using—

- (a) as the standard amount, the amount applying to that person under the FAS Regulations at the time the person first became entitled to an annual payment or an ill health payment; and
- (b) where the person was entitled to an ill health payment or an interim ill health payment, the original actuarial factor.

(4) The recalculated amount has effect from whichever is the later of—

- (a) the date on which the person first became entitled to an annual payment or an ill health payment; or
- (b) the date on which these Regulations came into force.

(11) Paragraph 7 was amended by S.I.s [2006/337](#), [2007/358](#), [2008/1432](#), [2009/1851](#) and [2011/839](#).

(12) Paragraph 7(3) to (5) was inserted by [S.I. 2009/1851](#). Sub-paragraphs (3) and (4) were amended by [S.I. 2011/839](#).

(5) In the case of a person to whom paragraph (3) applies, nothing in these Regulations affects the application of the FAS cap when calculating increases already accrued in relation to periods before the day on which these Regulations come into force—

- (a) paragraph 9 (annual increase to an annual payment) of Schedule 2 to the FAS Regulations⁽¹³⁾; or
- (b) paragraph 9 (annual increase to an ill health payment) of Schedule 2A to the FAS Regulations⁽¹⁴⁾.

(6) In this regulation, “the original actuarial factor” means the actuarial factor applied in accordance with paragraph 5 (actuarial reduction) of Schedule 2A to the FAS Regulations at the time when the person first became entitled to an ill health payment.

Signed by authority of the Secretary of State for Work and Pensions.

Date

Name
Parliamentary Under- Secretary of State,
Department for Work and Pensions

⁽¹³⁾ Paragraph 9 was substituted by S.I. 2009/1851 and amended by S.I.s 2010/1149 and 2011/839.

⁽¹⁴⁾ Paragraph 9 was inserted by S.I. 2009/1851 and amended by S.I.s 2010/1149 and 2011/839.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Financial Assistance Scheme Regulations 2005 (S.I. 2005/1986) (“the FAS Regulations”) establish a financial assistance scheme (“the Scheme”), allowing for payments to be made to or in respect of certain members or former members of certain occupational pension schemes where the liabilities of the scheme to those members are unlikely to be satisfied in full.

Schedule 2 (determination of annual and initial payments) to the FAS Regulations prescribes the method for calculating the amount of an annual payment for each category of qualifying member or their survivor. It also provides for a cap (“the FAS cap”) to be imposed on the amount of expected or actual pension (paragraph 7). Schedule 2A (determination of ill health and interim ill health payments) makes similar provision in the case of ill health payments.

Regulation 2 of these Regulations inserts a new provision, regulation 17AA (meaning of “the FAS Cap”) into the FAS Regulations. It provides for a revised FAS cap dependent on a person’s length of pensionable service when the person first becomes entitled to an annual payment or an ill health payment under the Scheme.

The standard amount, calculated in the same way as the current cap, will apply to anyone with pensionable service of less than 21 years. For anyone with 21 years or more pensionable service, the FAS cap will be increased by 3 per cent of the standard amount for each full year over 20 years, to a maximum of double the standard amount. The standard amount will, however, continue to apply in the case of initial and interim ill health payments under the Scheme.

Regulations 3 and 4 of these Regulations make amendments to the FAS Regulations consequential on the introduction of the new FAS cap.

Regulation 5 of these Regulations is a transitional provision which provides for how the FAS cap is to be re-calculated where the person is already receiving an annual payment or an ill health payment before these Regulations come into force or the person had been receiving initial payments or interim ill health payments (irrespective of when those payments start) before being paid an annual or ill health payment. In particular, it provides that the new FAS cap for long service is to be calculated using the cap amount that applied when the person first became entitled to an annual payment or an initial payment under the Scheme (regulation 5(3)). The increased amount takes effect from the date the Regulations come into force or the person first became entitled to an annual payment or an ill health payment, whichever is later (regulation 5(4)).

An impact assessment has not been produced for these Regulations as they have no impact on business or civil society organisations.